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File No. O Prohibition/49

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Legal DEPARTMENT

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Subject:—

Opinions under the Bombay

Prohibition Act,

1949

P-12
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464-A.

C O N T E N T S

Legal Department No. O. Prohibition/49

Sr. No.	Compilation No.	Subject	Pages.
1.	O.No.7090 dt. 27-6-49	B'bay Prohibition Act, 1949 Designation of Prohibition Officers- Whether question of land is involved for changing the disignation	1-
1.	O.No. 7637 dt. 9-7-49	Cancellation of contracts, licenses or permits for abkari-offences.-Whether the person convicted under the provisions can be held to be ineligible for going contracts q	3-
3.	O.No- 9034 dt. 10-8-49	Sec. 116- Whether the conviction for the offences ~~whether~~ under the Act, would be conviction under chapter XXII of the Code	5
4.	H.D. Endt- No. 4/6/B dt. 20-9-49	Bombay Prohibition Act, 1949 Section 116- Trial of cases under	7-
5.	O.No. 9474 dt. 23.8.49	Whether the limit of possession provided for in Sec. 14-B of the repealed Act arise under the new Act	9-
6.	O.No. 11064 dt. 4-10-49	Sec 148(3)- Prescribing the limit of sale and the limit of possession of liquor	11-15
7.	O.No. 13518 dt. 25-11-49	Section 148(2) whether, despite the repeal of the eanctments specified in Schedule I, pending legal proceedings remain unaffected.	17-
8.	O.No. 12977 dt. 15-11-49	Sec. 24 (2) (d)- Whether the action proposed to be taken will suffice or it will be necessary to issue a ~~n~~ notification under the	19-20
9.	O.No. 11167 Dt. 6-10-49	Sec. 85- Indian Railways Act, 1890- Sec. 120 Whether being in a State of intoxication is punishable under the	2'

Mjr/1/6
5 Cs.

Legal Department

Designations of Prohibition officers

Bombay Prohibition Act 1949.

No question of law is involved in this case It is true that Officers performing functions under the Prohinition Act are to be called Prohibition Commissioner and Deputy Prohibition Commissioner. But if for the purpose of other Acts they have to be called Excise Commissioner and Excise Deputy Commissioner, there is no objection to do so. In that case they may be called Prohibition and Excise Commissioner and Prohibition and Excise Deputy Commissioner-.

Sd/- J.R. Dhurandhar
27/6

oc.

Additional Secretary to Government,

U.R. to R.D. No. 7090, dated the 27th June 1949.

Rjr/31/5

4 Cs.

ancellation of contracts, licences or permits for Abkari Offences.

Bombay Prohibition Act, 1949 and Bombay Opium Smoking Act, 1935.

It can be laid down that when a person is convicted of an offence under the Bombay Prohibition Act, 1949 or the Bombay Opium Smoking Act, 1935, he may be held to be ineligible for being given contracts or licences which are entirely at the discretion of Government and the grant or issue of which is not regulated by any Act. If an Act contains ~~spefici~~ specific provisions for the grant of contracts, licences or permits and does not leave any discretion to Government in the matter, those provisions will have to be followed. In any case the cancellation of any contracts, licences or permits will be governed by the provisions of any Act under which they were granted or by the conditions on which they were granted. In the absence of any provision in such Act or conditions, the cancellation on the ground that the grantee or licensee was convicted of an offence under the Bombay Prohibition Act or the Bombay Opium Smoking Act will not be legal. The view taken by Chief Secretary is correct.

Sd/- J.R. Dhurandhar
8/7

O.C.

Additional Secretary to Government.

Chief Secy, No. 7637, dated the 9th July 1949.

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Bombay Prohibition Act, 1949, Sec. 116. Criminal Procedure Code sections 5(2), 260, 261, 262(2) and Chapter XXII

There is no substance in the points raised by Mr. Jadhav, L.L.A. under section 5(2) of the Criminal Procedure Code, 1898, where a special law has provided a special procedure, its provisions override the general provisions of the Code. (I.L.R. 31 Bom 438). Section 116 of the Bombay Prohibition Act, 1949, requires that in all trials for offences under this Act, the Magistrate shall follow the procedure prescribed in the Code of Criminal Procedure for the trial of summary cases in which an appeal lies. This means that only the procedure prescribed in Chapter XXII of the Criminal Procedure Code for the trial of summary cases in which an appeal lies has to be followed. The other powers of the Magistrate are not however, affected by this provision. Since the Bombay Prohibition Act does not mention which court is empowered to try offences under the Act, section 29(2) of the Criminal Procedure Code will apply and the Magistrate mentioned in column 8 of Schedule II to the Criminal Procedure code with respect to offences against other laws has the jurisdiction to try offences according to the quantum of punishment prescribed in Chapter VII of the Bombay Prohibition Act. It would not therefore be necessary to invest the Magistrates with summary powers to try offences under the Bombay Prohibition Act. The limit of imprisonment prescribed by section 262(2) of the Criminal Procedure Code would not be applicable. That provision applies to in case of any conviction under the Chapter i.e. for offences which are mentioned in sections 260 and 262 of the Code. Even though the offences under the Bombay Prohibition Act are triable summarily, the conviction for the offences under the Act would not be conviction under Chapter XXII of the Code.

o.c. Sd/-P.M.Lad 10/8
Remembrancer of Legal Affairs.

U.R. to R.D. No. 9034 dated the 10th August 1949 .

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Office of the R.L.A.

Bombay Abkari Act, 1878. Section 14-B
- - -
Bombay Prohibition Act, 1949.
- - -
Limit of possession.

The Bombay Prohibition Act, 1949 having already come into force, it would no longer be necessary to consider the scope of section 14-B of the repealed Bombay Abkari Act, 1878. Possession of intoxicants is now controlled by issue of permits and passes which are non-transferable and no holder of such permit can allow the use or consumption of any stock held by him under the permit to any person who is not the holder of such permit (see sections 11, 40,42 and 43). The question of prescribing the limit of possession provided for in section 14-B of the repealed Act does not appear to arise under the new Act.

Sd/- P.M.Lad
22/8/

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9474 , dated the 23rd August 1949.

Mjr/31/5

4 Cs.

Under sub-section (3) of section 140 of the Bombay Prohibition Act, 1948, notification rules, etc. issued under the Bombay Abkari Act, 1878, were continued in force and deemed to have been issued under the provisions of the Act in so far as they were not inconsistent with the provisions of the Act, unless and until they were superseded by notifications etc. issued under that Act. Notification No. 10464-45(f) dated 16th June 1949 provided that the intoxicants specified in column 1 of the Schedule may be ---transported, possessed, purchased, consumed or used by any person without any pass or permit in quantities not exceeding those specified respectively in columns 2 to 8 of the said Schedule, as the case may be .... Quantities of foreign liquor as given at item No. 8 show that the intention was to continue in force the system which obtained before 16th June 1949, i.e., the limit of sale and the limit of possession was to be identical and was to be the same as before. This notification therefore must be treated as having superseded the notifications which were issued under section 14-B and section 17 of the Bombay Abkari Act, 1878, and it will no longer be necessary to consture those notifications or to consider their consistency or otherwise with the provisions of the Bombay Prohibition Act, 1949.

2. The proviso to the notification says that where such person is a company, association or body of individuals, whether incorported or not, such person shall not import, export etc.

in the context in which the expression " body of individuals" occur, it will be impossible so to construe it as to include an ordinary family therein. The principle of nocitur a sociis will apply to the expression " body of individuals" which will then take its colour from the words with which it is associated and will be referable to the type represented by the words "company , association,". If it be the intention that a family should be subject to the same restriction as an individual, apter language will have to be used. However, it is a matter for consideration whether having permitted a person to possess a particular quantity, it would be reasonable to say that if the person happens to be a member of a family, as most persons must be, the members in the family.

3. In passing it must be observed that the use of the words " consumed or used " in the notification requires reconsideration. The notification as it stands prohibits the consumption or use of more than the quantity specified in columns 2 to 8 without any reference to the time limit to which such consumption is to be referred. The result would be that for something more than the quantity specified in the Schedule a person would require a permit; and I understand that no system of permits for consumption has as yet started. If the intention be to allow a person to consume as much as he can possess at any one time, that intention shouldbe brought out clearly so as to leave no

scope for ambiguity or misunderstanding.

Sd/- F.M.Lad

2/10

o.c.

Remembrancer of Legal Affairs.

U.R. toR.D. No. 11064 dated 4th October 1949.

Mjr/31/5

4 Cs.

The attention of the District Magistrate, Kaira, should be invited to the provisions of section 148(2)9ii) whereunder despite the repeal of the enactments specified in Schedule II, pending legal proceedings remain unaffected and are to be continued and disposed of as if the Bombay Prohibition Act was not passed. Regarding new proceedings under the Bombay Prohibition Act, convictions for purposes of enhanced punishment for second or subsequent offences must naturally be under the Act itself. However, for the limited purpose of assessing the penalty (as distinguished from enhancing it) a previous conviction even under the repealed enactments may become relevant and can then be proved in the manner provided for in the Code of criminal Procedure.

Sd/-P.K.Lad
20/11

o.c. Remembrancer of Legal Affairs.

U.R. to R.D. No. 13518
dated 25th November 1949

Mjr/31/5
4 Cs.

L.D.R.I. No. 10117 dated 5.11.1949

Submitted.

It appears that the Advertisement Manager, the Times of India, Bombay, requested the Prohibition and Excise Commissioner, Bombay, to permit him to publish an advertisement in the Times of India regarding tenders for the pruchase of wines liquors in Saurashtra received by them from the Director of Information, united State of Saurashtra. As publication of advertisement relating to intoxicants has been prohibited under sec. 24 of the Bombay Prohibition Act, 1949, the Commissioner informed the Advertising Manager that the advertisement could not be published. Later, when it was brought to the Commissioner's notice that the Govt. of Saurashtra desired that wide publicity should be given to the disposal of the stock of foreign liquor and that the advertisement was published in the Bombay Chronicle dated 31-10-1949, he informed the Advertisement Manager of the Times of India that he had no objection to the publication of the advertisement in their newspapers.

R.D. prposes to warn the Bombay Chronicle for its illegal action and to approve the Commissioner's action in permitting the Times of India to publish the advertisement R.D. proposes to request the Commissioner to issue a circular to news papers drawing their attention to the law and asking them to advise the advertisors to approach Govt. for exemption & also to explain the legal position to the Saurashtra Govt.

The question for R.L.A's consideration is whether the action proposed to be taken will suffice or whether it will be necessary to issue a notification under sec. 24(2)(d) of the Bombay Prohibition Act, 1949.

By publishing advertisement in question the Bombay Chronicle has contravened the provisions of cl. (a) of sub-sec. (1) of sec. 24, as such it would be liable to conviction and punishment under sec. 73 of the Bombay prohibition Act, 1949. However, as the Commissioner

~~R~~.A.L.R.

Reply may be :-

It would be necessary to issue a notification under Cl. (d) of section 24(2) of the Bom. Prohibition Act, 1949 Since otherwise there would be no legal cover for ~~xxx~~ omitting to prosecute the Bom. Chronicle and issuing to commission to the Times of India for publishing the advertisement.

Sd/- R.T.Katarki 12/11

R.L.A.

Sd/- P.M.Lad 12/11

U.O.R. to R.D. No. 12977 dated 15-11-49

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4 Cs.

Office of th R.L.A.

Bombay Prohibition Act, 1949 Sec. 85

Indian Railways Act, 1890 Sec. 120

Merely being in a state of intoxication will not be punishable under section 85 of the Bombay Prohibition Act, 1949; on the other hand if the drunken man is also incapable of taking care of himself, he cannot claim that he should be tried for the offence under section 12 of the Indian Railways Act, 1890. The question of the same act constituting an offence under both enactments does not, therefore, arise.

Sd/- P.M.Lad
4/10

O.C.

Remembrancer of Legal Affairs.

U.n. to R.D., No. 11167, dated the 6th October 1949

(Please also see R.L.A's No. 2490, dated 21-2-50

Mjr/31/5

4 Cs.